

§ 20.2053-2

preserve the estate's right to claim a refund for the amount of the fee that is subsequently paid or that subsequently meets the requirements of paragraph (d)(4) of this section for deducting certain ascertainable amounts.

Example 2. Amount of claim not ascertainable. Prior to death, Decedent (D) is sued by Claimant (C) for \$100x in a tort proceeding and responds asserting affirmative defenses available to D under applicable local law. C and D are unrelated. D subsequently dies and D's Form 706 is due before a final judgment is entered in the case. The executor of D's estate (E) may not claim a deduction with respect to C's claim on D's Form 706 under the special rule contained in paragraph (d)(4) of this section because the deductible amount cannot be ascertained with reasonable certainty. However, E may file a timely protective claim for refund in accordance with paragraph (d)(5) of this section in order to preserve the estate's right to subsequently claim a refund at the time a final judgment is entered in the case and the claim is either paid or meets the requirements of paragraph (d)(4) of this section for deducting certain ascertainable amounts.

Example 3. Amount of claim payable out of property qualifying for marital deduction. The facts are the same as in *Example 2* except that the applicable credit amount, under section 2010, against the estate tax was fully consumed by D's lifetime gifts. D is survived by Spouse (S), and D's estate passes entirely to S in a bequest that qualifies for the marital deduction under section 2056. Even though any amount D's estate ultimately pays with respect to C's claim will be paid from the assets qualifying for the marital deduction, in filing Form 706, E need not reduce the amount of the marital deduction claimed on D's Form 706. Instead, pursuant to the protective claim for refund filed by E, the marital deduction will be reduced by the claim once a final judgment is entered in the case. At that time, a deduction will be allowed for the amount that is either paid or meets the requirements of paragraph (d)(4) of this section for deducting certain ascertainable amounts.

(e) *Disallowance of double deductions.* See section 642(g) and § 1.642(g)-1 with respect to the disallowance for income tax purposes of certain deductions unless the right to take such deductions for estate tax purposes is waived.

(f) *Effective/applicability date.* This section applies to the estates of decedents dying on or after October 20, 2009.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 7238, 37 FR 28719, Dec. 29, 1972; T.D. 9468, 74 FR 53657, Oct. 20, 2009; T.D. 9468, 74 FR 61525, Nov. 25, 2009]

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§ 20.2053-2 Deduction for funeral expenses.

Such amounts for funeral expenses are allowed as deductions from a decedent's gross estate as (a) are actually expended, (b) would be properly allowable out of property subject to claims under the laws of the local jurisdiction, and (c) satisfy the requirements of paragraph (c) of § 20.2053-1. A reasonable expenditure for a tombstone, monument, or mausoleum, or for a burial lot, either for the decedent or his family, including a reasonable expenditure for its future care, may be deducted under this heading, provided such an expenditure is allowable by the local law. Included in funeral expenses is the cost of transportation of the person bringing the body to the place of burial.

§ 20.2053-3 Deduction for expenses of administering estate.

(a) *In general.* The amounts deductible from a decedent's gross estate as "administration expenses" of the first category (see paragraphs (a) and (c) of § 20.2053-1) are limited to such expenses as are actually and necessarily, incurred in the administration of the decedent's estate; that is, in the collection of assets, payment of debts, and distribution of property to the persons entitled to it. The expenses contemplated in the law are such only as attend the settlement of an estate and the transfer of the property of the estate to individual beneficiaries or to a trustee, whether the trustee is the executor or some other person. Expenditures not essential to the proper settlement of the estate, but incurred for the individual benefit of the heirs, legatees, or devisees, may not be taken as deductions. Administration expenses include (1) executor's commissions; (2) attorney's fees; and (3) miscellaneous expenses. Each of these classes is considered separately in paragraphs (b) through (d) of this section.

(b) *Executor's commissions* (1) Executors' commissions are deductible to the extent permitted by § 20.2053-1 and this section, but no deduction may be taken if no commissions are to be paid. In addition, the amount of the commissions claimed as a deduction must be in accordance with the usually accepted